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No. 750

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

COMPLETE AUTO TRANSIT, INC.,
Appellant,
vs.
CHARLES F. CARPENTIER,
Secretary of State of Illinois,
Appellee

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS, EN BANC

MOTION FOR LEAVE TO FILE BRIEF ON BEHALF OF THE NATIONAL AUTOMOBILE TRANSPORTERS ASSOCIATION AS AMICUS CURIAE AND BRIEF IN SUPPORT THEREOF

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MOTION FOR LEAVE TO FILE BRIEF ON BEHALF OF THE NATIONAL AUTOMOBILE TRANSPORTERS ASSOCIATION AS AMICUS CURIAE

National Automobile Transporters Association hereby respectfully moves for a leave to file a brief, appended hereto, as *amicus curiae*, in support of Appellant's jurisdictional statement.

Appellant has consented. On March 13, 1961, movant's counsel, by telegram, requested consent of the Appellee's attorney. As of this date such consent has not been granted and movant has reason to believe it will not be.

National Automobile Transporters Association is a voluntary association of more than 100 motor carriers engaged in the transportation of motor vehicles in interstate commerce under authority granted by the Interstate Commerce Commission. Its members engage in multiple state operations between all of the 48 continental states, including operations in Illinois, and between Illinois and other states of the union. One of the principal purposes of the Association is to express the view of its more than 100 members with respect to judicial decisions involving interstate commerce by individual states, particularly as such decisions affect the members' multiple state operations.

The decision by the Supreme Court of Illinois is of fundamental concern to Association members who must of necessity be residents of the several states in which they operate. The apportionment of a corporation's activities for transportation purposes between the several states, or the assembly of such activities in one state for the purposes of residency, poses a serious problem with respect to operations throughout the United States. By virtue of the inherent nature of interstate and multiple state motor carrier operations it is impossible or infeasible for any corporation to limit its offices and branches to one state. Appellant and Appellee are primarily concerned with the determination to be made by the states of Illinois and Missouri, and the fact that the multiple state motor carrier, as a corporation, is required to maintain equally important branches in more than one state may be overlooked and the matter determined solely as a problem of local state law.

Viewing the matter as a local problem is inconsistent with the broad national purposes represented by the interstate commerce and equal protection of the law provisions of the Federal Constitution. Because its members have such a direct interest in the legal concepts by which corporate activities may be segregated, or unified, by individual states for the purposes of imposing their state taxes, or denying equal treatment, permission is respectfully requested to file the annexed brief, *amicus curiae*.

Respectfully submitted,

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March 21, 1961.

BRIEF OF NATIONAL AUTOMOBILE TRANSPORTERS ASSOCIATION AS AMICUS CURIAE

INTEREST OF AMICUS

National Automobile Transporters Association is composed of more than 100 motor carriers engaged in the transportation of motor vehicles in interstate commerce under operating authority granted by the Interstate Commerce Commission. Under such authority, its members are authorized and required to engage in multiple state transportation throughout the nation, including the State of Illinois. To perform such transportation they must maintain substantial terminal facilities in states other than that of their incorporation, and autonomous places of business in numerous states, in order to effect the transportation of automobiles in the most economical and convenient manner to the general public, including that portion of the public within the State of Illinois.

The location of their terminal facilities is beyond the control of such members and is dictated solely by the determination of the automobile industry as to where, and in what state, plants for the manufacture or assembly of automobiles will be located. As a national organization, embracing corporations required to maintain substantial business locations in more than one state, the Association has a substantial interest in the legal jurisprudence relating to definitions of the term "residence" as applied to corporations in general. An unduly restrictive legal concept of corporate residence which would by law limit a corporation to the state in which it is incorporated, or the state in which it maintains what each and different states

may variously consider to be "the principal place of business," introduces numerous complexities and discriminations into what should be a uniform area of law.

Particularly is the Association concerned with the non-uniform treatment of interstate motor carriers by individual states which imposes unequal and discriminatory taxation as a result of the carriers multi-state operations. Interstate motor carriers must of necessity conduct their operations over interstate highways financed largely by the Federal Government. For such highways they are now taxed at an ever growing rate by such Government. Discriminatory state taxation falling unequally between foreign corporations and domestic corporations, and between various foreign corporations, poses an increasingly critical problem of state and federal relationships.

The Association files this brief in support of Appellant because it believes that it is incompatible with the broad national concepts expressed by the Interstate Commerce Clause of and the 14th Amendment to the Federal Constitution for a state to treat foreign corporations *domesticated* in a sister state differently than foreign corporations *incorporated* in the same sister state.

I.

There is no legal justification for treating Appellant as a foreign corporation domesticated in Missouri any differently than a foreign corporation incorporated there, or having only an office in Missouri.

Two conclusions immediately appear from examination of the factual details of Appellant's operation. First, its St. Louis activities are bona fide, of long standing, and required by the nature of its business. In no wise can they be considered a subterfuge designed to provide a juris-

diction in which to title and pay registration fees on the vehicles there used. Second, it is difficult to think of any additional indicia of corporate presence which could be evidenced in a jurisdiction than here appears with respect to Appellant in Missouri. The ownership and use of real and personal property, the public identification of such property at a specific location, to wit, 3501 Chevrolet Avenue, St. Louis, Missouri, the establishment and use of a bank account and credit facilities, the negotiation of labor contracts, the purchase of supplies and equipment, the collection of freight charges, the payment of employees for services, and the payment of state and municipal taxes, are all the physical acts that could be evidenced by a motor carrier, individual or corporate, within the boundaries of a state.

By virtue of the scale of its activities in Missouri, Appellant has qualified to do business there. This it is required to do by Missouri law.[1] By such qualification it becomes entitled to "the same * * * rights and privileges as a domestic corporation * * * and * * * subject to the same duties * * * and liabilities * * *." *Vernon's Ann. Mo. Stats.* Sec. 351.575.

In Missouri then Appellant enjoys all the rights and duties of a Missouri corporation. Although the provisions of the Illinois statute regarding foreign corporations are identical[2] it refuses to recognize appellant's status in Missouri to be the same as that of "a domestic corporation" of Missouri.

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[1] Foreign corporations doing business in Missouri must qualify and subject themselves to Missouri law, *V. A. M. S.* Sec. 351.571 *et seq.*

[2] *Smith Hurd Ill. Ann. Stats.*, Ch. 32, Sec. 157.103.

Under the decision of the Illinois Court a foreign corporation incorporated in Missouri would be a "resident" of Missouri and not taxed in Illinois on its Missouri vehicles. Although Appellant is under Missouri law entitled to the same rights and privileges as such corporation its Missouri vehicles are taxed in Illinois.

Similarly a foreign corporation, incorporated in a state other than Missouri, but having an office and operations only in that state, would be exempt on its Missouri vehicles in Illinois, but not Appellant. This because in addition to its Missouri operations Appellant does business also in a third state. A similar result would be reached if Appellant were incorporated in Indiana or Kentucky, but was required to maintain substantial operations in Missouri or Michigan. The Association submits that the distinction drawn here is without foundation in fact and so illogical as to offend basic concepts of equal protection and due process of law. Appellant pays more taxes on its wholly interstate operations in Illinois merely because of its multi-state character. If its movements were limited to the two states of Missouri and Illinois, the taxes here in question would be inapplicable. The disproportionate tax on its interstate movements results flatly and solely from the multi-state character of its operations.

The tax treatment of Appellant thus poses a substantial federal question and one of first impression.

The treatment accorded Appellant with respect to its domestication in Missouri may be compared to the treatment under similar law of foreign corporations domesticated in Illinois. The purpose of the identical Illinois and Missouri provisions[3] is to "place foreign corporations

[3] V. A. M. S. Sec. 351.575; Smith Hurd Ill. Ann. Stats., Ch. 32, Sec. 157.103.

* * * upon precisely the same footing as domestic corporations * * * to obliterate any distinction in the treatment * * * to give the foreign corporation the same standing in the eye of the law * * *, *Friend & Co. v. Goldsmith & Seidel Co.*, 307 Ill. 45, 53.

Illinois has thus determined as to foreign corporations within its borders, "the residence of a foreign corporation might be in any state where it was by comity permitted to exercise its franchise * * *", *Friend & Co. v. Goldsmith & Seidel Co., supra*, p. 49. Thus a Missouri corporation with a principal office in St. Louis, Missouri, but also maintaining an office and activities in Cairo, Illinois was determined to be a resident of Illinois for purposes of law like any domestic corporation, *H. C. St. J. R. R. Co. v. Crane*, 102 Ill. 249. See also *Bank of North America v. Chicago, Danville and Vincennes R. R. Co.*, 82 Ill. 493.

Yet in exactly the reverse situation, where Missouri has in all respects treated Appellant as a resident of Missouri under exactly the same provisions of law, Illinois holds it to be a nonresident. Surely such determination is not justified merely because Appellant is a foreign carrier operating in Missouri whereas this cited Illinois decisions involved foreign carriers operating in Illinois?

The Association also submits that "in the eye of the law" the rule which permits a corporation to be deemed a resident "in any state where it (exercises) its franchise * * *" precludes, as a matter of due process, such a multi-state corporation from being deemed a resident of only one state.

Multi-state carriers have long been held to reside in every state in which they carry on intrastate transportation acivities, *Davis v. Banking Co.*, 17 Ga. 323, *Bristol v.*

Railroad Co., 15 Ill. 437, *Railroad Co. v. Paul*, 72 Miss. 487, *Slaven v. Railroad Co.*, 51 Mo. 308, *Tobin v. Railroad Co.*, 47 S. C. 387. "* * * if it have several places of business, it must also be deemed to have several places of residence * * *", *Poland v. United Traction Company*, 88 App. Div. 281, 283, 177 N. Y. 577.

This apportionment of a carrier's residency to every state in which it has "a usual place of business" does not offend due process because "the very act of transportation, (is) the dominant end and aim of its corporate existence", *International Milling Co. v. Columbia Transp. Co.*, 292 U. S. 498, 520, (Water carrier). If due process supports the legal residence of a carrier in any state in which it carries on substantial activities, the converse is equally true, namely that due process precludes it from being treated as a non resident in any such state where substantial activities are so performed. Despite, however, the substantial nature of Appellant's operations in Missouri which, "in a very real and practical sense," make it a resident there, *International Milling Co. v. Columbia Transp. Co., supra*, page 519, Illinois severs completely this corporate relationship with Missouri and leaves Appellant like a wraith suspended in mid air.

"In a legal sense the distinction between foreign and domestic corporations doing business within the borders of a state is non-existent.[1] Indeed this court has said that the original foundation for such distinction was a metaphysical one now "displaced * * * with common sense." *Neirbo Co.*

[1] 31 States have virtually identical provisions to those of Illinois and Missouri, 3 have seemingly broader provisions for registered foreign corporations, and in 14 states the statutes contain no indication that a domesticated foreign corporation is to be treated any differently than an incorporated domestic corporation. *CCH Corporation Law Guide*, Vol. 1, paragraph 710 and paragraph 810.

v. Bethlehem Shipbuilding Corp., 308 U. S. 165, 169. As noted the statutes and decisions of Illinois and Missouri "obliterate the distinction" between foreign and domestic corporations within their borders. Surely then due process proclaims the distinction cannot be resurrected by one of such states at this late date in order to treat a corporation completely domesticated in a sister state as a non-resident thereof for the sole purpose of imposing a tax not otherwise applicable. Otherwise, the distinction drawn has "no relation to the opportunities, benefits, or protection which * * *," are extended by the various states in which the corporation is operating. *Standard Oil Co. v. Peck*, 342 U. S. 382, 385.

II.

The statute denies Appellant equal protection of the law by requiring it to pay a tax in Illinois without extending to it the same benefits received for such payment by Illinois corporations and other favored foreign corporations.

At the time Appellee imposed the taxes in question upon Appellant's Missouri vehicles the State of Illinois had in effect reciprocity agreements with forty states, including the states of Georgia, Michigan, Missouri and Ohio in which Appellant is required to maintain principal places of business.[5] Under these agreements Illinois corporations and foreign corporations deemed by Illinois to be residents thereof, became entitled upon payment of Illinois license fees on their vehicles to substantial exemptions from taxation in the forty other states which have entered into such agreements with Illinois. This was in accord with the

[5] *Smith Hurd Ill. Ann. Stats.* Ch. 95½, Sec. 3-402, p. 139.

purpose of the law which was to secure to residents of Illinois reciprocal privileges in such other states, *Illinois Revised Statutes*, 1957, Ch. 95½, Sec. 3-402 B (1).

As one author has pointed out, reciprocity agreements between states "are, for all practical purposes, treaties * * * the line of reasoning [applicable to treaties] is applicable as well to interpretation of interstate truck reciprocity agreements and by no device, restrictive reservation, or otherwise, should a state which is party to such a treaty be permitted by its courts to avail itself of loopholes of escape from the general scope * * *", *Kyanitz, The Nature of Truck Reciprocity Agreements, 15 Jr. of the Mo. Bar*, 140, 143, 144 (March, 1959).

Here Illinois by its courts has found an attractive loophole in its own agreement. While securing to a certain class of corporations, both domestic and foreign, extensive privileges from taxation in 40 jurisdictions, it finds a way to impose its taxes on certain foreign corporations, like Appellant, engaged in interstate commerce under circumstances which denies them the same benefits received by the first class.

Although, under like circumstances if Appellant's branch office were in Cairo, Illinois instead of St. Louis, Missouri, Illinois would hold it a resident of Illinois, and although Missouri under statutory provisions, said by Illinois to be designed to "obliterate any distinction" between domestic and foreign corporations as to residency, has treated Appellant as a resident of Missouri: Illinois deems Appellant a nonresident of Missouri.

Certainly, as applied by Appellee, its Act, "in its practical operation does not require like fees for equal privileges held by foreign corporations * * * under the same circumstances", *Air Way Electric Appliance Corporation v. Day*, 266 U. S. 71, 84.

CONCLUSION

It is respectfully submitted that the Court should note probable jurisdiction, determine this matter on the merits, and declare the Act unconstitutional as applied by Appellee to Appellant.

Respectfully submitted.

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PROOF OF SERVICE

I, George S. Dixon, attorney of record for National Automobile Transporters Association, Amicus Curiae herein, depose and say that on the 21st day of March, 1961 I served a copy of the foregoing Motion for Leave to File Brief on Behalf of National Automobile Transporters Association as Amicus Curiae and Brief in Support thereof on attorneys for Appellants and on Mr. Samuel H. Young, Attorney General of Illinois, attorney for Appellee by depositing same in the United States Post Office, with air-mail postage prepaid, addressed to counsel of record at their Post Office addresses.

GEORGE S. DIXON

Subscribed and sworn to before me at Detroit, Michigan, this 21st day of March, A. D. 1961.

.....
Notary Public, Wayne County, Michigan.
My Commission Expires:.....